

UNCLASSIFIED Department of State

INCOMING
TELEGRAM

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ACTION ARA-15

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BUENOS AIRES 2244

E.O. 12065: GDS 3/21/85 (THAYER, YVONNE) OR-P
TAGS: SHUM AR PGOV PORS
SUBJECT: (U) SUPREME COURT RAPS ARMY IN CRIMINAL CASE

REF: BUENOS AIRES 2086, PARA 11

1. (U) THE SUPREME COURT ON MARCH 20 ORDERED THE ARMY COMMANDER-IN-CHIEF TO RETURN WITHIN FIVE DAYS A NON-COMMISSIONED ARMY OFFICER TO VILLA DEVOTO PRISON, FROM WHERE HE WAS REMOVED TO MILITARY DETENTION AGAINST A JUDICIAL ORDER ON FEBRUARY 23. THE DECISION, TRACING IN DETAIL EVENTS SINCE THE FEBRUARY 18 ARREST OF WARRANT OFFICER DOMINGO VICENTE BERRUETA FOR THREATENING A CIVILIAN MOTORIST WITH A GUN, DENIED THE ARMY JURISDICTION IN THE CASE AND REJECTED ITS CLAIM OF HAVING ASSURED OPERATIONAL CONTROL OVER THE PENITENTIARY SYSTEM IN ORDER TO REMOVE THE PRISONER. THE COURT BASED ITS DECISION ON THE FACT THAT BERRUETA WAS BEING HELD UNDER COMMON CRIMINAL CHARGES HAVING NOTHING TO DO WITH SUBVERSIVE ACTIVITY, AND THAT THE ARMY HAD NO RIGHT TO TAKE POSSESSION OF A PRISONER WITHOUT CONSULTING THE PRESIDING JUDGE.

2. (U) THE CASE, BROUGHT TO THE SUPREME COURT BY THE JUDGE WHO ORIGINALLY ORDERED BERRUETA'S DETENTION IN VILLA DEVOTO, ATTRACTED CONSIDERABLE ATTENTION HERE. BERRUETA'S DETENTION WAS ORDERED BY JUDGE GUILLERMO LEDESMA ON FEBRUARY 18. ON FEBRUARY 23, THE ARMY HIGH COMMAND REMOVED BERRUETA FROM VILLA DEVOTO TO THE FIRST CORPS MILITARY BARRACKS ALLEGEDLY FOR REASONS OF HIS PERSONAL SAFETY WHERE HE WAS TO REMAIN "AT THE DISPOSITION OF THE JUDGE WHILE HIS CASE WAS BEING HEARD." JUDGE LEDESMA FIRST APPEALED TO THE ARMY HIGH COMMAND AND THE PRESIDENT FOR THE RETURN OF HIS PRISONER, BUT WAS INFORMED SEPARATELY BY BOTH IN EARLY MARCH THAT BERRUETA'S TRANSFER HAD BEEN ORDERED FOR "SECURITY REASONS" AND TO PROVIDE HIM WITH "ADEQUATE LODGINGS." AT THAT POINT POINT, LEDESMA TOOK THE CASE TO THE SUPREME COURT.

3. (U) ACCORDING TO THE BUENOS AIRES HERALD'S INTERPRETATION OF THE DECISION, THE COURT CLEARLY DISTINGUISHED BETWEEN SUBVERSIVE CRIMES, ACKNOWLEDGED AS BEING WITHIN THE ARMY'S DOMAIN, AND COMMON CRIMINAL CHARGES, WHICH IT DECLARED ARE IN THE DOMAIN OF THE LAW COURTS. THE DECISION ALSO DENIED THE ARMED FORCES' OPERATIONAL CONTROL OVER THE FEDERAL PRISON SYSTEM, AND ESTABLISHED THAT IN THE EVENT OF QUESTIONS AS TO THE CARE AND SAFETY OF PRISONERS, THE ARMED FORCES WERE REQUIRED TO CONSULT WITH THE COURTS FOR NECESSARY ADJUSTMENTS OR TRANSFER.

4. (U) IN A STATEMENT MADE PUBLIC MARCH 19, THE BUENOS AIRES BAR ASSOCIATION (COLEGIO DE ABOGADOS) STRONGLY CRITICIZED BERRUETA'S REMOVAL TO ARMY BARRACKS AS "ONE OF THE GRAVEST ATTACKS SUFFERED BY THE JUDICIARY." IT ALSO CRITICIZED LEDESMA FOR NOT APPEALING TO THE SUPREME COURT IMMEDIATELY AFTER BERRUETA WAS REMOVED FROM THE FEDERAL PRISON. (THE SUPREME COURT'S EXPLANATION INDICATED LEDESMA HAD TAKEN IMMEDIATE AND DIRECT ACTION

TO OBTAIN BERRUETA'S RETURN AND ONLY AFTER HIS APPEALS TO THE PRESIDENT AND ARMY HIGH COMMAND FAILED DID HE TURN TO THE HIGH COURT.)

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5. COMMENT: THE COURT'S RULING GOT SIGNIFICANT FRONT PAGE ATTENTION IN THE LOCAL PRESS AND A LAUDATORY EDITORIAL FROM THE BUENOS AIRES HERALD, WHICH CONGRATULATED THE COURT'S ACTION AS PROMPT AND HEARTENING. WHILE THERE ARE STILL FIVE DAYS IN WHICH TO SEE IF THE ARMY COMPLIES WITH THE COURT'S ORDER, THE COURT'S REASSERTION OF ITS JURISDICTION IN CRIMINAL CASES, INCLUDING THOSE INVOLVING A MILITARY FIGURE, AND ITS FORCEFUL WARNING TO THE ARMED FORCES TO ABIDE BY JUDICIAL ORDER AND PROCEDURE AND NOT EXCEED ITS AUTHORITY CONSTITUTE ANOTHER SIGNIFICANT AND PUBLIC STEP FORWARD IN THE PAINSTAKING PROCESS OF REVIVING ARGENTINA'S LEGAL INSTITUTIONS. THIS IS AMONG THE MORE STARK CHALLENGES THE COURT COULD HAVE GIVEN THE EXECUTIVE POWER, FOR NON-COMPLIANCE WILL BE TO FLAUNT THE EXECUTIVE'S DISREGARD FOR LEGAL AUTHORITY AND TO COMPLY WITH THE COURT'S DEMAND WILL ALMOST CERTAINLY ANGER FACTIONS OF THE ARMY. FORMER FIRST CORPS COMMANDER (NOW ARMY CHIEF OF STAFF) SUAREZ MASON IS OFTEN CITED AS THE PERSON WHO ORDERED BERRUETA'S REMOVAL FROM DEVOTO THROUGH TIES HE STILL HAS WITHIN HIS OLD COMMAND. THOUGH THIS IS PLAUSIBLE ENOUGH WE HAVE NO EVIDENCE TO SUPPORT THE ASSERTION.

END COMMENT.
CASTRO

ARGENTINA PROJECT (S200000044)

U.S. DEPT. OF STATE, A/RPS/IPS

Margaret P. Grafeld, Director

(X) Release () Excise () Deny

Exemption(s):

Declassify: () In Part (X) In Full

() Classify as () Extend as () Downgrade to

Date _____ Declassify on _____ Reason

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